

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
STATE FARM MUTUAL AUTOMOBILE :
INSURANCE COMPANY, :
:
Plaintiff, : 10-CV-3848 (ILG) (RML)
:
v. : January 9, 2012
:
JOHN McGEE, et al., : Brooklyn, New York
:
Defendants. :
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TRANSCRIPT OF CIVIL CAUSE TELEPHONE CONFERENCE
BEFORE THE HONORABLE ROBERT M. LEVY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: JONATHAN MARKS, ESQ.
EMILY J. PRENTICE, ESQ.

For the Defendants: MARIA DIGLIO, ESQ.
EDWARD BLODNICK, ESQ.
EUGENE LEVY, ESQ.
ANTHONY MAMMO, ESQ.
GARY BERGOON, ESQ.

For the Movant: JAY SHAPIRO, ESQ.

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1 THE CLERK: This is Docket Number 10-CV-3848,
2 State Farm v. McGee et al.

3 Would counsel please state your appearances for
4 the record.

5 MR. MARKS: Jonathan Marks and Emily Prentice on
6 behalf of plaintiff State Farm. Good afternoon, your Honor.

7 THE COURT: Good afternoon.

8 MS. DIGLIO: This is Maria Diglio and Edward
9 Blodnick for Dr. McGee and the PC defendants.

10 MR. LEVY: This is Eugene Levy for Emilio Paez and
11 Fresh Meadows Management and Medical Management Center.
12 Good afternoon.

13 THE COURT: Good afternoon.

14 MR. MAMMO: Your Honor, this is Anthony Mammo for
15 Humberto Romero and his PC defendants.

16 MR. BERGOON: This is Gary Bergoon for the
17 Ilyaichs and the management entities: Alternative Program
18 Queens, Executive Corp., Sion Marketing, and London Billing.
19 Good afternoon, your Honor.

20 THE COURT: Good afternoon.

21 MR. SHAPIRO: Jay Shapiro for non-party National
22 Insurance Crime Bureau.

23 THE COURT: Good afternoon.

24 Okay. Who would like to go first? Maybe I should
25 hear from plaintiffs first.

1 MR. MARKS: Sure, your Honor. We have a number of
2 items that are before the Court, but I think Mr. Mammo has
3 to get off the call, so I thought we'd go through those that
4 concern all parties that concern him first so that we can
5 address his scheduling.

6 THE COURT: Okay.

7 MR. MAMMO: Thank you.

8 MR. MARKS: The first item is relatively quick and
9 it is directed to all parties, and that is State Farm has
10 filed a motion to extend the expert discovery cutoff. Last
11 time we had been before the Court, the Court granted our
12 motion to extend the fact discovery cutoff, and we just
13 neglected to include the expert discovery cutoff as well.
14 Our motion just extends that cutoff the same amount of time
15 as the fact expert cutoff, so it would move it until
16 November 1, 2012. The fact cutoff is currently June 30,
17 2012.

18 THE COURT: And this is on consent?

19 MR. MARKS: Well, we filed a motion. We have not
20 heard any objection since we filed the motion. The parties
21 will have to state whether they consent or object.

22 MR. LEVY: Your Honor, Mr. Paez and his management
23 companies, we consent.

24 MR. BLODNICK: McGee defendants don't have any
25 objection.

1 MR. MAMMO: Neither do the Romero defendants.

2 MR. BERGOON: Neither do the Ilyaich defendants.

3 THE COURT: Have I heard from everyone?

4 MR. BERGOON: I think you have. Mm. Yes, your
5 Honor.

6 THE COURT: So it is, in fact, on consent. All
7 right. The application is granted.

8 MR. MARKS: Next, your Honor, State Farm has a
9 motion with respect to the Romero defendants. There is
10 essentially one relatively minor item that remains
11 outstanding. Mr. Mammo has actually gotten us some
12 materials. We need to resolve one issue. We expect to get
13 it resolved in short order and file something with the Court
14 withdrawing our motion.

15 So at this time on the Romero motion, we'd ask
16 that it entered and continued again because we expect to be
17 able to resolve that shortly.

18 THE COURT: On consent?

19 MR. MARKS: Yes. Yes, your Honor, on consent.

20 THE COURT: All right. Application granted.

21 MR. MARKS: The next one I don't know whether it
22 concerns Mr. Mammo or not, but I guess I will turn to it,
23 and that is, we have a motion to compel Ridgewood Medical.

24 Ridgewood Medical, we believe -- we think it's
25 jointly owned by defendant Romero and defendant Paez. We

1 have successfully served a subpoena on Ridgewood Medical.
2 It has not responded to the subpoena. When we have
3 contacted them at their offices, they tell us: We get the
4 subpoena; we hand it to Mr. Romero, but we understand that
5 Mr. Romero claims not to own it or claims not to be
6 responsible for it.

7 MS. PRENTICE: He claims not to have any documents
8 responsive to the subpoena in his possession, custody, or
9 control.

10 MR. MARKS: And we've not heard from Mr. Paez.
11 The problem is this:

12 We need someone to step forward and say they're
13 responding on behalf of Ridgewood, a duly served subpoena,
14 and that hasn't happened yet. Perhaps, now that we have
15 counsel for Mr. Romero on the phone and we have counsel for
16 Mr. Paez both on the phone, maybe someone can address to
17 whom we should be directing this because we're at a loss.

18 MR. MAMMO: Judge, maybe I can shed a little bit
19 of light on it. This is Tony Mammo for Romero.

20 THE COURT: Yes.

21 MR. MAMMO: Essentially, my understanding in
22 speaking with my client, and I haven't seen any of the
23 documentation, but I did speak with him twice on this issue,
24 apparently Mr. Romero and Mr. Paez created this entity known
25 as Ridgewood. All they did was simply create the entity and

1 file for a license to do business with the state, but they
2 never received a license; so, they essentially never
3 conducted any business. They didn't do any medical billing.
4 The corporation really never -- although, it existed, it
5 never did any business.

6 So when I asked Mr. Romero if he had the records,
7 he told me no, that Mr. Paez had the records, and that was
8 -- unfortunately, that was last week.

9 So I did speak with Emily Prentice. I did send a
10 letter to counsel for State Farm indicating what I just
11 described to the Court. I then spoke with Emily, and she
12 asked me to give her a letter indicating that I would be
13 appearing or responding on behalf of Ridgewood, but I felt
14 that I should first speak with Paez's attorney about that to
15 see which of us was going to put in that appearance and then
16 respond to the subpoena.

17 MR. LEVY: I'm not aware of any ownership interest
18 on Paez part for Ridgewood. I'll have to speak to him about
19 it.

20 MR. MAMMO: Okay. What I suggest is counsel and I
21 -- counsel for Paez and counsel for Romero. we can speak
22 after the conference, and then one of us will send a
23 response indicating we are responding to the subpoena on
24 behalf of Ridgewood and giving our answer. If there are any
25 records, we'll give them the records. If not, we'll

1 indicate either by signature by counsel or an affidavit from
2 one of the principals what happened with this company.

3 THE COURT: When will you do that?

4 MR. MAMMO: Pardon me?

5 THE COURT: When will you do that?

6 MR. MAMMO: I can do that by the end of next week,
7 Judge.

8 THE COURT: Okay. Mr. Marks?

9 MR. MARKS: That's absolutely agreeable. So if
10 the Court would be willing to order compliance with the
11 subpoena by Ridgewood by the end of next week, that is
12 absolutely agreeable.

13 MR. MAMMO: Again, it will either be (a) we have
14 records and we're going to get them to you. I don't know
15 that I can get records by the end of next week, but it will
16 be, yes, we have records and we'll get them or (b) there are
17 no records and here's either an affidavit or a letter from
18 counsel indicating that there are no records.

19 MR. MARKS: I guess what I would ask, if there
20 were to be records and you were to produce records, how much
21 time would you need to produce records so that we can
22 essentially have an order, so we don't have to come back and
23 forth to the Court.

24 MR. MAMMO: I understand. I don't know. Are we
25 setting a followup date, so that maybe I can -- I want to

1 say a month. I just don't know. I understand Mr. Paez
2 packed up his offices and moved them to Puerto Rico, so I
3 don't know if the records are in Puerto Rico or in a box in
4 storage somewhere in Long Island. I don't know yet. My
5 understanding is Romero does not have any records, but I
6 have to check. So I would say at least thirty days.

7 THE COURT: Mr. Marks?

8 MR. MARKS: Thirty days seems long, but if it's
9 thirty days and we're done, then I guess that's fine. If
10 we're going to have compliance with the subpoena within
11 thirty days by Ridgewood, I guess that's fine.

12 THE COURT: Okay. So let's just be clear. Thirty
13 days is what date?

14 MR. MARKS: February 2.

15 THE COURT: No, we're the 9th today.

16 MR. MARKS: I'm sorry, yes. It would be like
17 February 9 or 10.

18 THE COURT: We'll say the 10th.

19 MR. MARKS: I would just say February 10, Judge.

20 THE COURT: Yes.

21 MR. MARKS: Thank you.

22 THE COURT: So the Ridgewood subpoena issue is
23 resolved. There will be a response to the subpoena by the
24 23rd of January and compliance by the 12th (sic) of
25 February. I'm sorry, by the 10th.

1 MR. MARKS: Thank you.

2 THE COURT: Okay, next.

3 MR. MARKS: Next, we -- so those are the issues
4 that concern Mr. Mammo.

5 MR. MAMMO: Thank you. I will stay on the call
6 until about quarter to three, then I have to go.

7 THE COURT: Okay.

8 MR. MARKS: Let's do some that are easy. We have
9 a motion to compel Dr. Davi. That motion can be withdrawn.
10 He has now complied with the subpoena and we withdraw that
11 motion.

12 THE COURT: Okay.

13 MR. MARKS: Next, we have motion to compel the
14 Paez defendants, that's Paez, Fresh Meadows -- I'm sorry,
15 it's the motion for default judgment against Paez, Fresh
16 Meadows, Medical Management Affiliate. I think the Court is
17 well-aware of the history with respect to this particular
18 motion. There have been two orders requiring compliance.
19 The last order required compliance by December 16, and
20 failure to comply by that date was on pain of sanction.

21 We have had some attempt at compliance since the
22 last hearing. So some records have been provided.
23 Compliance is, at this point, not complete. However, we do
24 acknowledge that there has been some effort, and so we would
25 appreciate that the Court might be disinclined to enter a

1 default given the effort that have been made. However, we
2 are at this point -- it's been a year since this discovery
3 has been served. We have be going at this a long, long
4 time, and there have been dates extended again and again and
5 again.

6 So with respect to this one, what State Farm would
7 be asking for is we would ask that compliance be complete
8 within seven days, that the Court set monetary sanction for
9 everyday after those seven days that the production is not
10 complete, and that we be awarded a monetary sanction for the
11 expenses and time that State Farm has incurred in having to
12 address this in the amount of \$2,000.

13 MR. LEVY: Judge, this is Gene Levy here. I have
14 been sending the paperwork as I have gotten it. As other
15 counsel has said, my client is in Puerto Rico. The records
16 and information we've been getting from sources in New York.
17 It's been painstaking, but I think my client has tried. If
18 we could have a little bit more time than seven days. I
19 know that Mr. Marks has a subpoena into his banks for
20 records. We have told the banks to issue the materials.
21 We're also looking for the same materials ourselves.

22 THE COURT: So you're asking for two weeks?

23 MR. LEVY: Two weeks would be wonderful, Judge.

24 THE COURT: All right. That will be final though,
25 and there will be sanctions imposed if there is not

1 compliance by those two weeks.

2 MR. LEVY: All right, Judge. Judge, I'm actually
3 engaged on trial right now. I was supposed to be down by
4 the courtroom in Queens Supreme about 15 minutes ago, if I
5 can be excused now.

6 THE COURT: Yes, I'm sorry for the delay here.

7 MR. MARKS: Judge, before Mr. -- I understand the
8 Court's ruling. Is the Court going to reserve ruling on
9 what those sanctions are. Would the Court consider
10 identifying what those sanctions would be? I feel like
11 we've been down this road a little bit with this particular
12 defendant, with both. If the Court would consider
13 identifying what those sanctions might be at the end of two
14 weeks?

15 THE COURT: I'm inclined to accept your
16 recommendation, but I will make a final ruling at the time
17 when I've had a little more time to think about it. It
18 doesn't seem unreasonable that there be \$2,000 in costs and
19 that there would be a daily sanction, monetary sanction, for
20 failure to comply.

21 MR. MARKS: Okay, thank you.

22 THE COURT: That does not seem unreasonable.

23 MR. LEVY: Thank you, Judge. This is Gene Levy.
24 I'm signing off.

25 THE COURT: Okay. Mr. Marks, this is for

1 defendants Paez, Fresh Meadows Management, Inc. What was
2 the third?

3 MR. MARKS: Medical Management Affiliated LLC.

4 THE COURT: Got it.

5 MR. MARKS: Judge, that takes us then to the
6 Ilyaich defendants --

7 THE COURT: Yes.

8 MR. MARKS: -- who actually find themselves in a
9 similar situation. Again, there have been two orders issued
10 by this Court. The second of those orders required
11 compliance by December 16 or on pain of sanction. The
12 Ilyaich defendants have also made some efforts, but again
13 their compliance is also not complete. We're asking for the
14 same thing with respect to them. We're asking for
15 compliance, in their case, in seven days as well with the
16 same monetary sanctions on a daily basis should they not
17 comply and for our costs.

18 MR. BERGOON: Judge --

19 THE COURT: Yes.

20 MR. BERGOON: -- we have in our -- we have stated
21 that my clients have given everything that they have. Any
22 other documents are in the hands of the accountants, which
23 one of them was subpoenaed by State Farm anyway.

24 Jonathan, I don't know if he sent you documents
25 yet, Mr. Nastall (ph).

1 MS. PRENTICE: I don't believe we've received
2 documents from him yet, but I think that we have been in
3 contact with his office.

4 MR. BERGOON: Mr. Nastall, any of the other
5 remaining documents that have been requested would be in the
6 hands of Mr. Nastall, if he has these. Other than that, my
7 client doesn't have any documents or anything else.

8 Some of the requests concern medical records,
9 which would be in the hands of the defendant Dr. McGee. He
10 wouldn't have anything to do with medical records. That's
11 where we are.

12 Your Honor, I'm trying my best to get everything
13 that they request to them through the accountant, and that's
14 where we are right now.

15 MR. MARKS: We don't have written responses to the
16 document requests, so this is really the first we've heard
17 that you don't have documents responsive, you don't have
18 anymore documents responsive or that the documents are in
19 the possession of someone else.

20 Look, we're not asking you to create documents
21 that don't exist. So if full compliance means a document
22 response that says: we have produced any and all responsive
23 documents, then that's fine. Do it and provide it.

24 MR. BERGOON: All right.

25 MR. MARKS: We just ask that it get done within

1 seven days. That shouldn't be too hard to do.

2 MR. BERGOON: Is Mr. Shapiro still on the line?

3 MR. SHAPIRO: I am.

4 MR. BERGOON: Jay, did I give you a document
5 response with the documents when I first gave them to you?

6 MR. SHAPIRO: You would have to ask Mr. Marks and
7 Ms. Prentice that. I don't recall. I don't know the state
8 of the file.

9 MR. BERGOON: All right.

10 MS. PRENTICE: We don't have any record of ever
11 having received written responses to --

12 MR. BERGOON: I'll check to see if it was sent
13 out. If not, then, Jonathan, I'll do a response to the
14 document request then. I thought it was sent out to the
15 Bureau, but --

16 MR. MARKS: The bottom line is our letters to
17 court and our letter to counsel identifies what we believe
18 to be things that are missing from the discovery.
19 Defendants either have them or they don't. We just ask that
20 it either be provided or we're told it doesn't exist, and
21 we're asking that that happen in seven days.

22 MR. BERGOON: Jonathan, if we talk to the
23 accountant Nastall, we'll have to determine what he still
24 has, if anything. It would be easier for me to respond if I
25 know that he has certain documents that you are looking for.

1 Whether he does that in seven days, I don't know. I don't
2 know what the holdup is with him. So if you and I want to
3 work something out with him directly, and then I can respond
4 after we see what he gives you, I think that would be
5 easier.

6 MR. MAMMO: If I could just interrupt. This is
7 Anthony Mammo for the Romero defendants. If I'm not needed,
8 I'm just going to sign off.

9 THE COURT: You're not needed from the Court's
10 perspective.

11 MR. MAMMO: Thank you, sir. Good day.

12 MR. MARKS: I guess I'm not --

13 MR. BERGOON: I'm doing the best I can with all
14 this. Again, I don't know what Nastall has at this point
15 because he hasn't given me a list of what he's given you,
16 but I will call him today and find out where he is with his
17 document production for you. That way I'll know if there's
18 any additional document that I did not already give you.

19 MS. PRENTICE: Gary, I'm speaking off the cuff. I
20 don't have access to the produced records in front of me. I
21 don't know for certain that Nastall hasn't responded yet. I
22 would have to double check that. But I understand from your
23 interrogatory responses, in any event, it sounds like there
24 was more than one accountant who provided services to your
25 client, and I don't think we subpoenaed the other

1 accountant.

2 MR. BERGOON: Mr. Charles. I gave you his -- the
3 documents he gave me I gave to you.

4 MS. PRENTICE: Okay.

5 MR. BERGOON: So maybe you should subpoena him too
6 then, if there is anything additional. He told me that's
7 all he had regarding all these defendants.

8 MR. MARKS: I don't know that we need to burden
9 the Court with our back and forth of what is missing or may
10 not be missing. I think, as we said, we have identified in
11 our letters both to the Court and to counsel those things
12 that we think are missing. Defendants either have them or
13 they don't. If they don't have them, tell us they don't
14 have them in a response. If they do have them, get them to
15 us. We would ask that that happen in seven days. If it
16 needs to be 14, we understand the Court's order with respect
17 to Paez, that's fine too; but, let's just set a deadline by
18 which it gets done.

19 MR. BERGOON: All right. That's fine, Jonathan.

20 MR. MARKS: So that's what we're asking the Court
21 to do for us is set, and let's just get it done. That's
22 where we are.

23 THE COURT: What are you offering to do at this
24 point?

25 MR. MARKS: I guess what I'm asking is, I'm asking

1 that it get done in seven days, and that if it's not done in
2 seven days that the Court impose a monetary sanction for
3 every day thereafter it's not done and costs. We will work
4 with Mr. Bergoon within those seven days to try and get it
5 done.

6 MR. BERGOON: Okay, seven is fine. I'll just get
7 it done with him and I'll get a response to you one way or
8 the other.

9 THE COURT: Okay. So ordered.

10 MR. BERGOON: All right.

11 MR. MARKS: Next, State Farm has a motion to
12 compel Dr. Rigney (ph) and Diagnostic Radiographic Imaging
13 or DRI. Is there anyone on the phone regarding that non-
14 party? There does not seem to be. That is an instance,
15 your Honor, in which we have received one category out of
16 two that are identified in the subpoena. What we require in
17 terms of full compliance is either that the second category
18 of records be produced or that we be told that they don't
19 have any.

20 So with respect to that subpoena, we're just
21 asking that they be ordered to comply within seven days.

22 THE COURT: Who is responding on that?

23 MR. MARKS: There doesn't appear to be anyone who
24 is on the call. We have served them with the subpoena. We
25 have served them with the motion, and we have served them

1 with the call-in information. So they're on notice.

2 THE COURT: Have we had anyone appear? Who are
3 these defendants again or these parties?

4 MS. PRENTICE: They're third parties, Dr. John
5 Rigney and Diagnostic Radiographic Imaging, it's his entity.
6 They are represented by counsel, but he apparently decided
7 not to call in today.

8 THE COURT: Okay.

9 MS. PRENTICE: He was provided with the call-in
10 information.

11 THE COURT: Who is his counsel generally?

12 MS. PRENTICE: His name is Timothy McColgan (ph).

13 THE COURT: Okay.

14 MR. MARKS: What I can suggest, your Honor, one of
15 the things you have done in the past in this instance is --
16 I guess I would ask, if you want to set a date by which they
17 must comply and given them a certain number of days short of
18 that date by which they can -- to show cause why they should
19 not be required to comply.

20 THE COURT: Okay.

21 MR. MARKS: So if you want to require them to
22 comply in ten days and have them show cause in five.

23 THE COURT: Yes. I'll do that as business days.
24 So we'll say comply by January 24 and show cause by January
25 17. We have a holiday in between. Okay, and that's for

1 John Rigney and Diagnostic Radiographic Imaging?

2 MR. MARKS: Yes, your Honor.

3 THE COURT: Okay, thank you.

4 MR. MARKS: Next then, we have a motion to compel
5 subpoena responses by Diagnostic Plus. This is an entity
6 that we have served a subpoena on. We have received no
7 response to the subpoena and have actually, really, not
8 heard from anybody, but it is a validly served subpoena. In
9 this case, as well, we need and order compelling compliance
10 with the subpoena by a date certain.

11 THE COURT: Okay. You're satisfied they've been
12 served and that they're aware of it?

13 MR. MARKS: We are satisfied that they have been
14 served and we've served them with a copy of the motion.

15 Now, what's happening when it's getting there is
16 anybody's guess, your Honor, but we have served at a valid
17 address for the entity. Yes, we're satisfied of that.

18 THE COURT: He filed the affidavit of service or
19 some proof of service?

20 MR. MARKS: One moment. We're checking, Judge.

21 MS. PRENTICE: Yes, your Honor. The affidavit of
22 service was attached to our motion, Docket Number 70.

23 THE COURT: Seventy, okay. Thank you. Okay. So
24 seven days?

25 MR. MARKS: That would be great.

1 THE COURT: So that would be the 17th. Oh, we'll
2 make it the 18th because of the holiday, January 18. Okay.

3 MR. MARKS: Thank you, your Honor. I think that
4 brings us to our motions with respect to the McGee
5 defendant.

6 THE COURT: Okay.

7 MR. MARKS: With respect to the McGee defendant,
8 State Farm has a motion to compel. We originally raised
9 that motion a number of -- I guess I'll call them "small
10 issues" with respect to particular discovery items.

11 We're in conversation with the defendants about
12 those.

13 THE COURT: Okay.

14 MR. MARKS: I think we're going to be able to work
15 most of those out and we'll address those. The ones that we
16 need the Court to address today are the three objections,
17 which we're going to ask the Court to rule on that deal with
18 (1) personal tax returns and bank records; (2) records
19 regarding ownership and income at other clinics; and (3) Dr.
20 McGee's pocket diary. All other aspects of that motion I
21 think the parties are going to try and work out and will get
22 back to the Court on.

23 We've briefed those three issues. I can speak to
24 them directly, if the Court would like.

25 THE COURT: Why don't you since we're on the

1 record.

2 MR. MARKS: Sure.

3 MR. SHAPIRO: Judge?

4 THE COURT: Yes, go ahead.

5 MR. SHAPIRO: This is Jay Shapiro. I represent a
6 non-party, and in all respect to Mr. Marks, is there any way
7 that we could discuss the NICD subpoena before we hear
8 further argument?

9 THE COURT: Sure. Absolutely. Go ahead.

10 MR. SHAPIRO: I think I could be brief on this. I
11 spoke to Mr. Blodnick on Friday. Mr. Blodnick, who I'm sure
12 will correct me if I say something incorrect, told me --
13 gave me some specifics about what Dr. McGee is looking for
14 in terms of NICD information. He informed me -- I
15 understand now what has been produced thus far, and I'm not
16 going back to my client to find out exactly what, if
17 anything, was disseminated to State Farm from NICD. With
18 that renewed focus and more narrow focus, I will get back to
19 Mr. Blodnick hopefully by next Friday with some more
20 information.

21 So our motion to quash is still out there. We
22 have not withdrawn that. But, depending upon what I find
23 out from the client, in light of what Mr. Blodnick said,
24 maybe we can resolve or at least narrow our motion to quash.

25 MR. BLODNICK: Your Honor, this is Ed Blodnick. I

1 have no problem with anything Mr. Shapiro said.

2 THE COURT: Okay. So what would you like the
3 order to say?

4 MR. BLODNICK: I would like the order to say --

5 MR. SHAPIRO: Go ahead.

6 MR. BLODNICK: Put it off I guess -- how long,
7 Jay, one week, two weeks?

8 MR. SHAPIRO: Yes, put it off for two weeks. You
9 and I will confer before then.

10 THE COURT: Okay. So two weeks and the holiday
11 would be January 24.

12 Did you want to just advise me what the result is
13 then or do we need a conference?

14 MR. SHAPIRO: Sure. No, we don't need a
15 conference.

16 MR. BLODNICK: (ui) we'll do a joint letter about
17 what we discuss. Is that fair enough, Jay?

18 MR. SHAPIRO: As long as you write the letter,
19 absolutely.

20 MR. BLODNICK: Okay.

21 THE COURT: Yes, but then you get to determine the
22 content.

23 MR. SHAPIRO: I trust Ms. Diglio. Thank you then,
24 Judge. I appreciate it.

25 THE COURT: Okay. So back to the McGee

1 defendants. Should we start with the tax returns and bank
2 records?

3 MR. MARKS: Sure. Your Honor, it's State Farm's
4 position that we need these records for a number of reasons.
5 State Farm intends to use these records.

6 As the Court is aware, among the critical issues
7 in this case is, what portion of the profits or income from
8 the PC defendants did McGee receive, and what portion of the
9 profits from the PC defendants did the lay owners or the
10 true owners of these PCs, what we allege to be the true
11 owners, the managers, receive? If the managers received the
12 lion's share of the profits, that would tend to show that
13 they were the owners and controlled it.

14 We allege that the way in which these managers
15 received these profits and hid their receipt of these
16 profits was that they collected them in the form of
17 management fees, that they were paid ostensibly as fees from
18 management services, but was really the way in which they
19 siphoned the profits out of the business and pocketed them.

20 So what are the ways in which we're going to go
21 about showing that. One of the ways we're going to go about
22 showing that is, well, how much income did Dr. McGee report
23 having received from the PC defendants. One place we're
24 going to go look for that is on his tax returns.

25 Now, the defendants respond: well, you don't need

1 his tax returns. You can look at the bank records, and the
2 bank records will show you how much money he got from the PC
3 defendants, or you can look at the tax returns of the PC
4 defendants and that will tell you how much; but, that is not
5 complete and that is not sufficient.

6 Number one, we don't know, just because we saw a
7 check written to Dr. McGee, that he got that money. We
8 don't know that that money went into his account because
9 they don't want us to see his personal bank records. We
10 also don't know whether he got money in some other way,
11 other than a check that may have been written to him. And
12 we also don't have to accept, are entitled to check the
13 accuracy of these documents, to compare what one tax return
14 looks like to another tax return. In fact, it's our
15 allegation that the lay persons control the PCs.

16 So what the businesses records look like and
17 Dr. McGee's personal records look like, how they may be the
18 same and how they may be different, is an important
19 component of this scheme and an important thing we need to
20 figure out. Ultimately, the critical fact is not the
21 dollars that McGee may have received because McGee could
22 have received gas money for reimbursement for driving to and
23 from the clinic, but it's what is his income. What is he
24 preparing to declare under penalties that apply to people
25 who sign tax returns under oath. What does that show he is

1 declaring as income.

2 Remember, we're entitled to test his credibility
3 that the document that he has signed under the penalties of
4 a tax return.

5 Additionally, we want to show how much of McGee's
6 income comes from the PC versus how much comes from other
7 sources. Now, we say that's because we want to show whether
8 he is beholding to the managers. They say, well, who cares;
9 that's not relevant whether he's beholding to the managers.

10 It is certainly well-established law and it's
11 certainly allowed. We have cited in our response brief the
12 case law on the relevance of motive. The jury is entitled
13 to know why in the world would a doctor with a license who
14 can practice medicine turn over his medical clinic to lay
15 people. Why would he let them tell him what to do. Why
16 would he order tests that they direct him to. Why would he
17 prescribe procedures that put money in their pocket.

18 One the reasons we expect to be able to show is
19 because he depended on them for his livelihood because the
20 money he got from them was a significant portion of the
21 money that he made in any particular year. The fact that he
22 was beholding, the fact that he was motivated to do what
23 they said. Motive is a relevant piece of evidence and
24 something we're entitled to show the jury and that will be
25 shown from these documents.

1 Finally, we want to be able to show how Dr.
2 McGee's financial arrangements with this clinic, the clinics
3 that are a subject of this case, varied with other clinics.
4 The defendants respond and say, well, who cares what happens
5 at other clinics. All you've got to show is, did McGee own
6 these clinics.

7 One of the issues is he is going to claim he got
8 this basket of services from the managers, and he's going to
9 claim that he paid fair market value. You know, they did
10 his photocopying, they scheduled his appointments, and he
11 paid the fair market value for those services.

12 Well, what did he pay for those services at some
13 other location. Did he pay a lot less. Did he get a
14 greater percentage of profits at another location. If he
15 did and he was paying a lot more at these clinics that are
16 the subject of this case, that would tend to show that the
17 reason he was doing it is because he wasn't paying fair
18 market value at the clinics that are at issue in this case.
19 The profits were being siphoned and that is why it is
20 relevant.

21 So for those reasons we ask that the personal tax
22 returns and bank records be produced. I will note that so
23 far all of the other defendants in this case have produced
24 their personal tax returns. Most of them have produced them
25 and we have no objection to them. So for those reasons we

1 ask the personal tax returns and bank records be produced,
2 your Honor.

3 MR. BLODNICK: This is Edward Blodnick, your
4 Honor. May I speak now?

5 THE COURT: Yes, please.

6 MR. BLODNICK: First of all, let's start at the
7 beginning. Between the management tax returns and the PC
8 tax returns, he could determine how much was taken out by
9 Dr. McGee because the amount taken out by Dr. McGee on his
10 PCs would either be shown as a W-2 income, 1099 income, or a
11 K-1, if it was a Sub-chapter S. In any one of the three
12 cases, the total amount of income earned by Dr. McGee would
13 be shown the PC tax return.

14 Furthermore, if they wanted to see whether Dr.
15 McGee actually received the checks that were made out to
16 him, they have a right to look at all the checks from the
17 bank accounts of the PCs and see if the back of those
18 checks, whether they were actually deposited in Dr. McGee's
19 account. So that part of the argument is ridiculous.

20 The second part of it is to see how much the
21 management companies make would be to look at their tax
22 returns. Now, let's go to the second thing that they're
23 asking for. They want to look at all Dr. McGee's other
24 companies.

25 THE COURT: Just a minute. I think there was one

1 other argument that Mr. Marks is making and that is that
2 there nay have been payment in some other form other than in
3 checks.

4 MR. BLODNICK: All right. Let's assume that Dr.
5 McGee got cash in addition to -- cash or other remuneration,
6 that would only help us and show that Dr. McGee got more
7 money and earned more money, and it certainly would not hurt
8 Dr. Marks' (ph) position that Dr. McGee was under
9 compensated for what he did. So the fact that Dr. McGee
10 made more money is not relevant. All they're trying to show
11 is Dr. McGee got disproportionately less share of the money
12 not a greater share of the money. If Dr. McGee got all the
13 money and the management company got nothing, we wouldn't be
14 sitting here talking now.

15 So the fact that Dr. McGee may have gotten
16 additional compensation is not relevant to their case. It
17 may be relevant to our defense, but it's not relevant to
18 their case.

19 Now, let's go to the other entities. What he's
20 asking you to do, your Honor, is he's asking us to produce
21 each and every entity that Dr. McGee is involved in, make a
22 business analysis of each of those companies, see if we have
23 the same management arrangements, the same services, the
24 same amount of time, and he's asking the Court to get
25 involved in the business analysis of every bit of business

1 Dr. McGee does. I've been involved in at least twenty of
2 these RICCO cases, and I've never heard of a request like
3 this. This is well beyond the scope of any reasonable
4 thing. If they need this information, what they should do
5 is hire themselves an expert and say that the amount of
6 compensation that Dr. McGee paid the management company is
7 unreasonable and excessive. He's really trying to make us
8 use our comparables as experts for him. This is not proper
9 discovery. It's well beyond anything to do with this case.

10 You can't just look at the tax returns. You have
11 to see what services. So that means you're going to hold
12 depositions about the services that Dr. McGee for every
13 business he's involved in and see if it's comparable to the
14 services he got in the PCs that are in this lawsuit. This
15 is so far beyond the realm of reason that it should be
16 denied summarily.

17 THE COURT: I'm sorry. Is this a relevance
18 argument, a burden argument, a privilege argument? What's
19 the basis for your position?

20 MR. BLODNICK: Relevance, burden. It's relevance
21 and burden, both. It has nothing to do with this case.

22 THE COURT: Well, you say it's not relevant --

23 MR. BLODNICK: He has thirty other companies. Do
24 you mean we have to produce all those records?

25 THE COURT: It sounds more like a burden argument

1 to me.

2 MR. BLODNICK: Then he's going to have to answer
3 questions at a deposition about what the differences were
4 between each of these thirty companies and the defendants
5 herein. I don't think that's even close to either
6 burdensome or relevant.

7 THE COURT: Mr. Marks?

8 MR. MARKS: Yes. First of all, I don't believe
9 that we have all the K-1s, 1099s from all of these various
10 PC defendants and management companies. In fact, we don't
11 have near complete tax returns. That's part of the problem.
12 We may get what they claim is all the returns and we're not
13 going to get all of them. Even if we do, we're entitled to
14 compare what's on those returns to what Dr. McGee says.
15 Maybe it's the same, but maybe it's not. If it's not, that
16 is certainly going to be relevant and important.

17 In terms of what -- we see a signature, an
18 endorsement on the back of the check, maybe that money went
19 to Dr. McGee, maybe it didn't. Maybe it's reimbursement for
20 driving a car, maybe it's income, and that is what's
21 important, is what is income.

22 In terms of -- I didn't hear any really response
23 to this issue of whether -- well, I didn't really follow the
24 response to whether or not Dr. McGee could be beholding;
25 but, the fact of the matter is I think, as I've said, the

1 extent to which he was dependent upon them for income would
2 be relevant.

3 With respect to this issue of other businesses, I
4 guess I'm hearing, essentially, agreement, that comparables
5 are relevant because he's saying our expert should go out
6 and do a comparison of comparable costs associated with
7 services. He just doesn't want us to do a comparable
8 comparison with Dr. McGee, which sort of seems to me to be
9 the most appropriate comparable to do. Because if Dr. McGee
10 can get these services somewhere else, that would seem to me
11 to be the most and relevant comparable to do and certainly
12 the kind of evidence that our expert would be most
13 interested. Remembering, of course, that the standard here
14 isn't relevance. It's likely to lead to the discovery of
15 relevant evidence. I think we're certainly past that
16 threshold.

17 So really it comes down to what I'm hearing as
18 burden. At that point, they've got to do more than say,
19 gee, this is a lot of work. They've got to do something to
20 say why this is a burden and they haven't done that. We're
21 not asking for all of the business records of every business
22 that Dr. McGee has ever been involved in. What we've said
23 is, we want records regarding his ownership income in
24 businesses involving the provision of healthcare services.

25 I understand he's a doctor, but we're not looking

1 for all of those records. We're not looking for all of his
2 medical records. We're looking for a very narrow scope of
3 records that would be relevant to what clinics did he own
4 and how much did he make and how did those costs compare.
5 Again --

6 MR. BLODNICK: May I be heard, your Honor?

7 THE COURT: Go ahead.

8 MR. BLODNICK: With regard to motivation, nothing
9 anywhere in any of the court cases that hold the motivation
10 for why a party does something. The issue is who controls
11 it, not the motivation, but actually who controls it.

12 So his argument as to motivation, it's just a new
13 standard and a new test for Malella that doesn't exist
14 anywhere.

15 Secondly, in regard to telling whether the check
16 was deposited in the bank, you can look at the back of the
17 check and you could see whether it was deposited or not. If
18 you picked it up for his tax return, there wasn't
19 reimbursement for being a chauffeur. It was part of his
20 income. So the tax returns for the professional corporation
21 will show what Dr. McGee got paid for his services and will
22 show what he got paid for reimbursement of expenses. It
23 will not show what kind of services he rendered for that
24 money, but it will show he got paid for whatever services he
25 rendered to the PC.

1 As far as the comparables go, they're not
2 comparables. Just because he owned another management
3 company, another PC that ran medical things, there's no
4 showing it's identical. There's no showing, but I said when
5 they have to get comparables, they have to get comparables
6 to these PCs. There's no showing anywhere that Dr. McGee's
7 other PCs are either comparable to these PCs. They may even
8 be in different fields of medicine. They may not do no-
9 fault work. There are so many variables that it's
10 ridiculous to say that it's a comparable. An expert has to
11 analyze these PCs, determine what services were rendered by
12 the management companies, what services were rendered by Dr.
13 McGee and whether they were paid in proportion to the amount
14 of services that they each rendered.

15 The other companies may have very different
16 financial arrangement, different services may have been
17 rendered, different people may have been on different
18 payrolls on one company. The secretaries may have been on
19 the PC payroll. On the next PC they may have been on the
20 management company's payroll. There are so many variables
21 that it's impossible to do that way, in addition to the
22 burden. It's not relevant and it's burdensome.

23 I'm done, your Honor.

24 THE COURT: Is everyone still there?

25 MR. BLODNICK: Yes, your Honor.

1 THE COURT: With respect to the burden, I really
2 haven't seen any -- I've heard assertions of burden, but I
3 haven't really seen any evidence of the burden.

4 MR. BLODNICK: Your Honor, I think we should have
5 a chance to make a written motion on this to set forth the
6 burdens and what's involved. This is not really something
7 for just an oral argument. I would like to have an
8 opportunity to brief this area and everything else.

9 THE COURT: Well, I think it has been briefed,
10 hasn't it?

11 MR. MARKS: It has, your Honor.

12 MR. BLODNICK: We would have to make a list of all
13 his PCs, explain the differences and everything else. This
14 is a very involved motion.

15 THE COURT: Right, but I think you had the
16 opportunity to do that and you didn't do it. That's part of
17 the problem.

18 MR. BLODNICK: Because it was so out of line of
19 anything I've ever seen before, I thought the Court would
20 deny it summarily.

21 THE COURT: Mr. Marks, if we were to do some
22 targeted discovery, just to narrow the burden a little bit,
23 how would you do it to see if this going to lead to the --
24 if it's truly relevant as you say it is? Can we narrow the
25 request?

1 MR. MARKS: I guess what we would do is we would
2 have him -- I think the way to do it is, we would have him -
3 - I think the way to do it is, we would have him identify
4 those medical business in which -- his medical businesses,
5 and then we'd have him produce management agreements and
6 general ledgers.

7 MR. BLODNICK: What time --

8 MR. MARKS: And the medical -- I'm sorry. General
9 ledgers, if there are agreements, management agreements for
10 those entities and tax returns.

11 MS. DIGLIO: What time period?

12 MR. MARKS: For the period governed by the
13 complaint.

14 MR. BLODNICK: Your Honor, I think they should be
15 forced to pay the cost of this, if you're going to grant
16 them this relief. This is a very burdensome thing, and it's
17 going to cost at least \$25,000 in additional discovery.

18 THE COURT: Why? Why will it cost so much?

19 MR. BLODNICK: Just figure, you have to -- say he
20 has five other entities. We have to get five sets of tax
21 returns for how many years does the complaint go back, six,
22 seven years. So you have thirty or forty tax returns,
23 thirty or forty years of general ledgers. This is a
24 humongous task.

25 MR. MARKS: I'm sorry. It's not. It's at most a

1 box of documents. State Farm has produced how many boxes of
2 documents in this case?

3 MS. PRENTICE: Tens of thousands.

4 MR. MARKS: State Farm has produced tens of
5 thousands of pages of documents in response to the document
6 requests it's received from defendants. This is --

7 MR. BLODNICK: (ui) financial position next to us.
8 We're not in the position to do this. We don't have that
9 sort of money.

10 MR. MARKS: It's certainly not more than a box of
11 documents that I'm talking about.

12 THE COURT: Tell me again the time period.

13 MR. MARKS: It's the tax returns and general
14 ledgers and some agreements.

15 THE COURT: Mr. Marks --

16 MR. BLODNICK: It's thirty years of tax returns
17 and thirty years of general ledgers and thirty years of
18 agreements.

19 THE COURT: Excuse me just a second.

20 Mr. Marks, what time period would you be satisfied
21 with? Is there anything less than the full time period for
22 the initial disclosure?

23 MR. MARKS: The time period of the complaint is --
24 we're not asking for thirty years. I'm sorry. The time
25 period of the complaint is 1998 to the present.

1 THE COURT: Can you do it for a little less than
2 that, at least for starters?

3 MR. BLODNICK: (Ui) years times five, your Honor,
4 that's times five different entities. Let's assume he had
5 five other entities. That's 65 different years we're
6 talking about.

7 THE COURT: I hear what you're saying. Mr. Marks,
8 would you be satisfied with a small period at least
9 initially --

10 MR. MARKS: I suppose -- well --

11 THE COURT: -- or does that not make sense?

12 MR. MARKS: I guess I would ask -- why don't I
13 suggest this then as a way to proceed in steps is, if they
14 would start by giving us a list of the entities in which Dr.
15 McGee had an ownership interest from 1998 to the present,
16 and then just produce the documents that we're talking
17 about. Why don't we say 2002 to 2008, but the list of the
18 entities would cover the entire period.

19 THE COURT: I understand. That's sounds
20 reasonable.

21 MS. DIGLIO: This is Maria Diglio. What if one of
22 the entities didn't practice any no-fault whatsoever, that
23 wouldn't really be relevant.

24 MR. MARKS: No, but that's the point. That's our
25 point. So if it's providing healthcare services, then

1 that's relevant to us because if he's behaving differently
2 when it's not a no-fault, that's relevant.

3 MR. BLODNICK: Of course he's behaving
4 differently. There are different reimbursement rates and
5 different methods of doing business. When you bill an
6 insurance company and you bill a no-fault provider, you bill
7 differently. There are different rules and regulations and
8 everything else.

9 MR. MARKS: Those are all very good arguments that
10 defendants can make to the jury at the appropriate time.

11 Another way to view what's happening is that the
12 reason they're doing that is because the clinics are owned
13 and controlled by lay persons argument that I'll make to the
14 jury.

15 THE COURT: We're not going to decide who's right
16 on the merits on this point. The question is whether this
17 is reasonably calculated to lead to the discovery of
18 admissible evidence. That's the standard for relevance. I
19 think the burden will be substantially narrowed with the way
20 that Mr. Marks has suggested. So if you can list the
21 entities in which Dr. McGee had an ownership interest from
22 1998 to the present, and then just produce the documents
23 that he requested for 2002 through 2008 I think that would
24 be satisfactory.

25 MR. BLODNICK: Your Honor, I would like a hearing

1 on the costs of producing same and the burden of producing
2 it where there should be an allocation of cost, but I think
3 it's unbelievably onerous on Dr. McGee. Now we're talking
4 after all this is over, they're preparing to serve an
5 amended complaint, if you look at his letter, and we're not
6 going to be dragged into more discovery after the amended
7 complaint. We're going to have to do this all over again.
8 There has to be some limit to the defendants' ability to
9 defend and everything else.

10 They're now planning an additional lawsuit with
11 additional parties and we're going to be dragged in again,
12 and there's an unlimited end to this thing which is totally
13 unreasonable to the defendants who are not in equal
14 financial position with State Farm. They're literally
15 bleeding us to death in this case. If they agree not to
16 amend the complaint, then that might be something different.

17 THE COURT: You filed your opposition on December
18 15. It was in your opposition that you had the opportunity
19 to talk about costs and provide some more specificity about
20 that.

21 MR. BLODNICK: I never thought the Court would
22 even entertain something like this.

23 THE COURT: Why was it that you agreed to that?

24 MS. DIGLIO: We've been involved in other cases,
25 your Honor, where this type of discovery has not been

1 allowed.

2 MR. BLODNICK: We've merged with another firm.
3 Between our two firms, I'd say we've handled at least thirty
4 or forty RICCO cases and this is the first time this has
5 ever been requested.

6 THE COURT: It's either not been allowed or it's
7 -- your statements are contradictory.

8 MS. DIGLIO: Well, in my instance it had been
9 requested, I believe by State Farm, in a case several years
10 ago and it was denied. This type of evidence was denied.
11 The judge ruled that this type of evidence is really
12 something for an expert witness. If you want to use
13 comparisons, you use comparisons that are truly comparable,
14 so that State Farm should get this kind of evidence from an
15 expert.

16 Whether McGee did something different with some of
17 his other entities doesn't mean anything except that it's
18 different. It doesn't mean that what he did with these
19 defendant PCs was right or wrong. It just means what he'd
20 done with them is different than what he does with other
21 entities. That doesn't make any kind of a difference. It
22 shouldn't say anything about either one is right or wrong.
23 They are what they are.

24 If plaintiffs want to get an analysis by an expert
25 of whether one or the other is structured incorrectly, then

1 that's what they should do.

2 THE COURT: Wouldn't they need some discovery to
3 do that though for the experts?

4 MS. DIGLIO: What I'm saying is, it doesn't make
5 any difference to plaintiff's case what McGee did with his
6 other PCs. What State Farm has to show is what he did with
7 these PCs is incorrect. They do that with an expert
8 witness. They don't do that by showing what McGee did with
9 his other PCs.

10 THE COURT: I know your argument is that what he
11 did with these other PCs doesn't establish that his
12 relationship here was improper, with the PC defendants was
13 improper, but it does shed some light on it. If there is an
14 argument, I think Mr. Marks' point is that if he treated
15 them differently, then there may well have been a reason for
16 the differential treatment and an expert would be able to
17 explain what that is.

18 MR. BLODNICK: Your Honor, suppose one of the
19 other management companies was his sister and there was a
20 different arrangement because it was his sister, you're
21 going to go into all those issues. In other words, what
22 he's really saying is you open the door to try the second
23 case to determine comparables for this case. That's what
24 you're opening the door to, which is so costly and so far
25 out that it just -- you're just putting the defendants into

1 bankruptcy.

2 THE COURT: Well, then I think you're right that I
3 need a little more information on this. You all have had
4 more experience in the area. You've had this issue dealt
5 with before. You know what the costs are. If you want to
6 file a supplemental letter on this, I'm happy to read it.

7 MR. MARKS: Judge, if I can.

8 MR. BLODNICK: (ui)

9 MR. MARKS: Excuse me, Judge, if I could speak a
10 moment, Mr. Blodnick.

11 Judge, I had not jumped in because I had
12 understood the Court to have ruled. It's not my habit to
13 argue with the Court's ruling once the Court has entered a
14 ruling.

15 THE COURT: I'm sorry. Who is speaking?

16 MR. MARKS: This is Jonathan Marks, your Honor.

17 THE COURT: Okay.

18 MR. MARKS: We have been round and round. This
19 discovery was served on these defendants in January of 2011,
20 a year ago. The Court had set a procedure for briefing.
21 They were given an opportunity to brief. They filed a
22 brief. They're done. Now, they're pulling in desperation,
23 it's going to bankrupt us. It's absolutely -- you know,
24 without citation, without support, without authority.
25 They've had their chance. It's done. The Court I think has

1 correctly and appropriately recognized the minimal standard
2 that applies to discovery, which is: is it reasonably
3 calculated to lead to the discovery of admissible evidence,
4 and this clearly is.

5 We have now, at the Court's urging, narrowed it
6 even further. What is it we're asking for. We're asking
7 for a list, a list of the medical businesses that Dr. McGee
8 has been involved in. How long can that possibly take him
9 to come up with. Then for a four-year period, go find the
10 tax returns, the general ledgers, and the management
11 agreements for six years for three categories of documents.
12 It is, at most, a box of documents in a case in which State
13 Farm has produced tens of thousands of documents.

14 I understand one could argue there's a difference
15 in terms of the resources available. But even at that
16 level, we're talking about a box of documents. They have
17 had their opportunity and now they're going to impose added
18 costs on us. Now we're going to go with a whole new round
19 of briefing, when the opportunity has come and gone. It is
20 time to move on. I think the Court has appropriately
21 considered and ruled, and I think we should go on.

22 THE COURT: Actually, Mr. Marks, I think you're
23 right on that. 2002 to 2008, though, is seven years.

24 MR. MARKS: I'm sorry, my apologies.

25 MR. BLODNICK: Your Honor, you're not going to let

1 us submit a letter at least on the costs?

2 THE COURT: Well, you can submit a letter on the
3 costs. But I'll tell you, the problem with it is that you
4 really -- that's something that you should have done before,
5 as I said earlier, and it's something that -- and if there
6 were other sorts of cases that were relevant to this, that
7 should have been mentioned, too.

8 MR. BLODNICK: Your Honor, I was brought on this
9 case in January, so I can't answer. But I thought the
10 request for these particular documents was made later than
11 that, but I'm not sure. I may be mistaken. I did not
12 become involved in this case until about four months ago.

13 THE COURT: The briefing anyway was December 15th.
14 It was completed by then. So we're having an argument here
15 and I've got people waiting in the courtroom. Obviously,
16 this is something that was scheduled, was to have been dealt
17 with, and all the relevant information was supposed to be
18 before the Court. If there's a burden issue, that issue
19 should have been noted.

20 I mean, I'm looking right now at document 71 and I
21 just don't even see that that argument is even made.
22 There's no way that the Court possibly could have understood
23 that argument and the cost argument. I think Mr. Marks is
24 right that it's not fair to raise it again. What's the
25 point of the first opposition if you're not going to put

1 what's important in it?

2 MR. BLODNICK: Your Honor, you're allowing them to
3 amend the complaint when this is all over. I think that's
4 equally unfair. (Ui).

5 THE COURT: I think we'll take it all one step at
6 a time.

7 MR. BLODNICK: That puts another round of
8 discovery and everything else. So why is it so crucial now
9 that we can't have a few more days to put in another
10 response, when everyone else was granted a little more time?
11 If we could just have one more week to respond to this, we
12 would really appreciate it.

13 THE COURT: What I think -- here's how we'll do
14 it. Why don't we do it as a motion for reconsideration.
15 We'll do it as a motion for reconsideration.

16 MR. BLODNICK: Fair enough. Okay, we'll get it
17 out within a week.

18 MR. MARKS: Judge, I understand the Court's ruling
19 regarding records, regarding ownership and income at other
20 clinics. What's the Court's ruling with respect to personal
21 tax returns and bank records?

22 THE COURT: At this point, I don't really
23 understand what the alternative would be. As I've seen it,
24 the alternatives have not been persuasive. So I think the
25 personal -- that can be redacted, however, but the personal

1 tax returns --

2 MR. BLODNICK: How can they be redacted, your
3 Honor?

4 MS. DIGLIO: Redacted as to what, your Honor?

5 THE COURT: Can you both agree as to what will be
6 redacted? Otherwise, I'll just make it a statement at this
7 point.

8 Mr. Marks, what would you agree to having
9 redacted?

10 MR. MARKS: I guess -- we're interested in -- we
11 need any portion of the return that discloses income from
12 any source.

13 MS. DIGLIO: Not any source, any health care
14 service.

15 MR. MARKS: No, any source.

16 MR. BLODNICK: Your Honor, that's a total fishing
17 expedition.

18 MS. DIGLIO: So if you've made investments?

19 MR. MARKS: We have argued that we want to show
20 what portion of this income is relative to his total income.

21 MR. BLODNICK: So if he won the lottery, that's
22 relevant to the case?

23 MR. MARKS: Absolutely. That's the point. So if
24 he wants to redact -- I'm not sure what it is they propose
25 to redact. None of the other defendants have redacted any

1 portion of their tax returns. If he wants to redact his
2 social security number, if he's got personal identifying
3 information he'd like to redact, that's fine. If he's got
4 charitable contributions that he'd like to deduct, I think
5 that would be fine.

6 THE COURT: What about dependents' income or
7 spousal income, if it's a joint return?

8 MR. MARKS: He could not identify the source of
9 the spousal income, but I think we would need to know the
10 total amount of the spousal income.

11 MS. DIGLIO: No, no, not spousal income.
12 Absolutely not, your Honor.

13 MR. BLODNICK: Your Honor, this is an Alice in
14 Wonderland, it really is.

15 MR. MARKS: Judge --

16 MS. DIGLIO: How would --

17 THE COURT: Excuse me, one at a time. Let me hear
18 from Mr. Marks.

19 MR. MARKS: Judge, the reason it is relevant is
20 for the reasons that I've articulated, which is Dr. McGee --
21 is Dr. McGee doing what they tell him to, because he depends
22 for his livelihood, in order to put bread on his table, for
23 what the laypersons tell him to do. Does he depend on them
24 for his income? And if he's getting -- if his joint family
25 income is coming from some other source or is not -- in

1 other words, if the money that he gets from the true owners
2 is 90% of his income or 95% of his income, then he's doing
3 what they're telling him because he depends on it. If it's
4 not, then it's not.

5 THE COURT: So you don't need to know what the
6 source of his spouse's income is.

7 MR. MARKS: Judge, we do not need -- we do not
8 need to know the source. So in other words, if they want to
9 redact who the -- who it is -- in other words, the spouse --
10 the name of the employer, the address of the employer -- we
11 don't need to know who the employer is, the name of the
12 employer, the address of the employer. But the dollar
13 amount that goes to McGee's joint return that is earned from
14 that spouse is relevant.

15 THE COURT: So what if you just -- what about the
16 bottom line? Any income earned from management companies
17 and then his total income, just those two kinds of data.
18 Would that be sufficient?

19 MR. MARKS: Well, no, because we need to know --
20 we need to know the income -- we need to know the total
21 amount of income he earns in any one year, because we want
22 to compare his total income --

23 THE COURT: Yes.

24 MR. MARKS: -- to the portion that comes from the
25 businesses at issue.

1 THE COURT: Right. So if we have the total amount
2 of income per year and the income from the P.C. management
3 companies -- management P.C.'s, wouldn't that be sufficient.

4 MR. MARKS: If you include in that anything from a
5 healthcare business in which he was involved, I think that
6 would be agreeable as a starting point.

7 THE COURT: All right, so you can redact anything
8 other than those three, total income per year, income from
9 the management companies and healthcare businesses.

10 MR. BLODNICK: What about spousal income?

11 THE COURT: Well, the total income including they
12 spousal income is the total family income, but you don't
13 have to identify the source of the --

14 MR. BLODNICK: That's fine?

15 THE COURT: Okay?

16 MR. MARKS: Judge, with respect to the bank
17 accounts then, are you ordering production of the bank
18 records?

19 THE COURT: Yes, unless there's some reasonable
20 redaction that I haven't thought of.

21 MR. BLODNICK: It's a total invasion of his
22 privacy.

23 THE COURT: Well, his bank records -- his bank
24 records with respect to what his total income is and the
25 source of income from management companies and healthcare

1 businesses, that's what I think the plaintiff is entitled
2 to. I'm not quite sure how to redact (ui).

3 MR. BLODNICK: If he had an attorney in a criminal
4 record or he had (ui) criminal matter, he has to turn that
5 over to them, also, as part of his bank records, that he
6 paid (ui).

7 THE COURT: I don't believe that's his total
8 income or management income, so no, he wouldn't have to turn
9 that over.

10 MR. BLODNICK: We're talking about the bank
11 records now, your Honor.

12 THE COURT: Right, but the bank records should
13 just show what his income is and what he's -- the same kind
14 of information as the tax return.

15 MR. BLODNICK: Okay, just that information. Okay,
16 thank you.

17 MR. MARKS: Well, no, but --

18 THE COURT: What else do you need, Mr. Marks?

19 MR. MARKS: Does defendant even have these bank
20 records, because --

21 MS. DIGLIO: Does McGee have them or do us as
22 attorneys have them?

23 MR. MARKS: Either, because my impression is that
24 ultimately, we're going to have to go to the bank to get
25 these bank records.

1 MS. DIGLIO: I haven't inquired with my client. I
2 think he has certain years of bank records. I don't know
3 how far back they go.

4 MR. MARKS: Because coupled with this is a --
5 there's a subpoena directed to the bank for his personal
6 bank records. We had agreed to withhold that subpoena until
7 this issue was resolved. What's going to -- the bank --
8 assuming -- I'm guessing we're ultimately going to have to
9 go to the banks because experience tells me it is very
10 unlikely that Dr. McGee has in his possession personal bank
11 records that are going to cover the period. Frankly, it is
12 considerably less burdensome for the bank to provide these
13 records and less costly for the bank to provide these
14 records, because State Farm pays to get them from the banks.

15 But when you get them from the banks, the banks
16 don't do redactions. There's just no practical way for that
17 to happen. There is, however, Judge, in this case -- there
18 is a protective order. We can agree that all those
19 documents that are produced as McGee's bank records can be
20 stamped confidential. They will all be confidential
21 pursuant to the protective order, and that should protect
22 whatever privacy concerns counsel is raising.

23 THE COURT: But what do you need from those bank
24 records?

25 MR. MARKS: The same type of information that

1 we're talking about here.

2 THE COURT: Right. So we're talking about total
3 income per year, income derived from the management
4 companies and income derived from healthcare businesses,
5 correct?

6 MR. MARKS: That's correct.

7 THE COURT: So any redactions would have to be in
8 conformity with that. Anything that does not reflect -- I
9 assume we're talking about bank statements and checks, is
10 that correct, and deposits?

11 MR. MARKS: That's correct, yes.

12 THE COURT: Okay. So, counsel, any redactions
13 would have to be along the lines I just described.

14 MR. MARKS: Okay. But, Judge, if we have to go to
15 the banks for bank records --

16 THE COURT: The banks will --

17 MR. MARKS: -- the banks will not do those
18 redactions.

19 THE COURT: I know, so they will have to produce
20 them to the defendants.

21 MR. BLODNICK: So let them produce the records to
22 us and we'll redact them and produce them to you.

23 MS. DIGLIO: That would be acceptable to us.

24 MR. BLODNICK: That's acceptable.

25 MR. MARKS: Okay.

1 THE COURT: If that's not satisfactory, then
2 you'll come back to me.

3 MR. MARKS: All right. So once we get these
4 records, Judge, we can come back if we deem them
5 insufficient.

6 THE COURT: Absolutely. If there's a problem with
7 the redactions or you think too much is redacted or there's
8 information you need.

9 MR. MARKS: Okay.

10 THE COURT: The same thing with the personal
11 diaries. Again, that's going to be -- the personal diary is
12 a difficult thing to deal with. I don't know what -- well,
13 go ahead.

14 MS. DIGLIO: Your Honor, this is Maria Diglio. I
15 don't know exactly what Dr. McGee testified to earlier, but
16 there's no showing -- we don't know from Dr. McGee whether
17 or not he put every single appointment in that diary,
18 whether it's complete, whether he was consistent in putting
19 entries in there. Not only to mention the fact that,
20 obviously, there's personal information in there that can
21 certainly be redacted, they may not be complete and of no
22 use.

23 So I would suggest that he be examined at his
24 deposition about that personal diary, and if it turns out
25 that yes, he wrote every single appointment and wrote down

1 every single time he went to every single location, then it
2 would be a useful tool for the defendants -- I mean for the
3 plaintiffs. But at this point, there's no showing that it
4 would be useful as any kind of admissible evidence for the
5 plaintiffs.

6 THE COURT: Mr. Marks?

7 MR. MARKS: Judge, that's a wonderful argument to
8 make to the jury about why a particular day of the diary
9 means one thing or means something different. But this is
10 discovery and the issue is, on any particular day, does the
11 diary show him providing medical services or does it not?
12 That's what we're entitled to see in the diary. Dr. McGee
13 can testify to his heart's content over what the diary means
14 or doesn't mean, and we can argue about that when we get to
15 trial. But for purposes of discovery, we're entitled to
16 see. He's got a contemporaneous document.

17 THE COURT: Let me just interrupt you for just a
18 second. Hold on just one second. So you're looking to see
19 where he does actually say that he's doing medical business,
20 correct?

21 MR. MARKS: Correct.

22 THE COURT: So if they want to redact anything,
23 they can redact as much as they want, correct, as long as
24 they don't redact the medical business. And the more they
25 redact, the stronger your case is, and the less they redact,

1 the stronger their case is.

2 MR. MARKS: That's absolutely true, Judge.

3 THE COURT: Okay. So why can't it be redacted?
4 Why can't he do the redactions?

5 MR. MARKS: I agree, Judge. In fact, we're
6 proposing that the only portion of the diary that they have
7 to produce are those entries where he is providing
8 healthcare services or -- just to be clear, or is physically
9 present at any of the P.C. defendants.

10 THE COURT: Okay, that's granted.

11 MR. BLODNICK: Okay, we agree to that.

12 MS. DIGLIO: All right.

13 MR. BLODNICK: We agree to that, your Honor.

14 THE COURT: Okay.

15 MR. BLODNICK: Your Honor, there's one last issue
16 now, all right?

17 THE COURT: Hold on just one minute, please,
18 because I have some people that have been waiting a while
19 and I think they're actually ready. Just hold on a second.

20 (Pause in Proceedings)

21 THE COURT: Go ahead, please.

22 MR. BLODNICK: The last issue is that we've
23 subpoenaed a bunch of doctors that did independent medical
24 examinations of the records of Dr. McGee, of patients that
25 he (ui), and Mr. Marks has objected to those subpoenas. At

1 the last phone conference, you asked whether we could reduce
2 the number. What I would propose is that we examine five
3 doctors.

4 THE COURT: I'm sorry, how many documents?

5 MR. BLODNICK: Five doctors.

6 THE COURT: Five doctors?

7 MR. BLODNICK: Third party doctors, witnesses.

8 State Farm did that, used (ui) medical examiners to examine
9 the records (ui) Dr. McGee.

10 THE COURT: And you're agreeing or disagreeing
11 about this?

12 MR. MARKS: Judge, I think we're disagreeing
13 because as I -- I still have not heard -- I had hoped we
14 were going to talk about this -- I thought we were going to
15 talk about it before the last -- between the last hearing
16 and now, because I thought we were going to hear some
17 articulation as to what possibly this has to do with this
18 case. We have yet to hear it. I'm certainly interested to
19 hear what they intend to explore and how it relates to this
20 case but I haven't --

21 MR. BLODNICK: Do you want me to answer that?

22 THE COURT: Before you do that, why don't I let --
23 since I have a number of people in this courtroom who need
24 about five or ten minutes of my time, why don't I let you
25 speak on this call to each other and I'll get back to you in

1 a few minutes.

2 MR. BLODNICK: Judge, I have a time problem, also,
3 at this point. This call now is going on to the second hour
4 almost completely. Is there any time we could reschedule
5 this last point, your Honor?

6 THE COURT: Well, when are you going to speak to
7 each other?

8 MR. BLODNICK: I could stay on with him for about
9 ten minutes and then I must leave at 4:00.

10 THE COURT: Okay.

11 MR. BLODNICK: So could we reschedule with you,
12 your Honor?

13 THE COURT: We can do this again at 3:00 tomorrow
14 if you want, 3:00 New York time tomorrow.

15 MR. BLODNICK: Thank you.

16 MR. MARKS: Just a moment, your Honor.

17 THE COURT: Is that good for everyone?

18 MS. PRENTICE: Your Honor, please just give us one
19 moment to check our schedules.

20 THE COURT: Yes, that's what I'm hoping you will
21 do. If that's not a good time, I'll find another one.

22 MR. MARKS: So 3:00 tomorrow New York time?

23 THE COURT: 3:00 New York time.

24 MR. MARKS: That's fine, your Honor.

25 THE COURT: Okay.

1 MR. BLODNICK: Okay, that's fine.

2 THE COURT: All right, thank you very much.

3 MS. PRENTICE: Thank you, your Honor.

4 MR. MARKS: So we're going to stay on.

5 THE COURT: You're going to stay on the line. Let
6 me just -- there was one question that I have. While I was
7 scrolling from screen to screen, something got erased. For
8 the default motion for the Paez defendants, Fresh Meadows
9 and Medical Management Affiliated, what do you have down as
10 the ruling on that?

11 MS. PRENTICE: Your Honor, I have down in my notes
12 that they will be given fourteen days from today's date to
13 fully comply.

14 THE COURT: Okay.

15 MS. PRENTICE: And if they fail to comply,
16 sanctions will be entered against them at that time.

17 THE COURT: Good. Thank you very much.

18 MS. PRENTICE: Thank you, your Honor.

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18 I certify that the foregoing is a correct transcript
19 from the electronic sound recording of the proceedings in
20 the above-entitled matter.
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25 ELIZABETH BARRON

January 13, 2012